

**Minneapolis Planning Department**

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**MEMORANDUM**

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DATE: October 16, 2003

TO: Council Member Gary Schiff, Chair, Zoning and Planning Committee  
Zoning and Planning Committee members

FROM: Jim Voll - City Planning Department

SUBJECT: Appeal of the City Planning Commission's decision for property located at  
150 Portland Avenue South (Whitney Hotel) – BZZ-1352 & MS-105

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Two appeals have been filed regarding the Whitney Hotel conversion to condominiums at 150 Portland Avenue South.

The first was filed by Steven De Ruyter on behalf of Canal Street Limited Partnership and BHP Company LLC opposing the conversion of the hotel to condominiums.

The second appeal was filed by Christian Dean on behalf of Standard Mill LLC (the original applicants). They are appealing the denial of the floor area ratio (FAR) variance, the minor subdivision, and the addition of condition number 9 to the site plan review, "openings on the river façade are not to be expanded."

The Planning Commission approved the conditional use permit and site plan review for 35 units and denied the FAR variance and minor subdivision on September 8, 2003. The Planning Commission voted 7-0 to approve the site plan review and conditional use permits and to deny the floor area ratio variance and minor subdivision.

The appeals were filed on September 18, 2003.

## Minneapolis Planning Department

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### MEMORANDUM

DATE: September 9, 2003

TO: Blake Graham, Planning Department  
Phil Schliesman, Licenses  
Clara Schmit-Gonzalez, Licenses

FROM: Neil Anderson, Planning Supervisor, Development Services

CC: Chuck Ballentine, Planning Director

SUBJECT: Planning Commission decisions of September 8, 2003

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The following actions were taken by the Planning Commission on September 8, 2003. As you know, the Planning Commission's decisions on items other than rezonings, text amendments, vacations, 40 Acre studies and comprehensive plan amendments are final subject to a ten calendar day appeal period before permits can be issued:

#### **17. The Standard Mill, LLC (BZZ-1352, MS-105 Ward 5)**

##### **150 Portland Avenue** (Jim Voll).

##### **A. Conditional Use Permit**

Application by Christian Dean, on behalf of Standard Mill, LLC for a conditional use permit at 150 Portland Avenue to allow 35 condominium units.

**Motion:** The City Planning Commission adopted the findings and **approved** the conditional use permit application for 35 condominium units for the Whitney Hotel located at 150 Portland Avenue South subject to the approval of the variances, conditional use permit for height, site plan review, minor subdivision, and HPC conditions of approval.

##### **B. Conditional Use Permit**

Application by Christian Dean, on behalf of Standard Mill, LLC for a conditional use permit at 150 Portland Avenue to allow the building to exceed the maximum

allowable height of six stories or 84 feet, whichever is less, in the Downtown Height Overlay District.

**Motion:** The City Planning Commission adopted the findings and approved the conditional use permit application to increase the height of the building from the maximum allowable height of 6 stories or 84 feet for the Whitney Hotel located at 150 Portland Avenue South subject to the approval of the variance, site plan review, minor subdivision, and the conditional use permit for 35 condominium units and HPC conditions of approval.

**C. Variance**

Application by Christian Dean, on behalf of Standard Mill, LLC, for a variance at 150 Portland Avenue to increase the maximum allowable floor area ratio in the Downtown Height Overlay District from 4 to 4.7.

**Motion:** The City Planning Commission adopted the findings and denied the variance application to increase the maximum allowable FAR from 4.0 to approximately 4.8 for the Whitney located at 150 Portland Avenue South.

**D. Major Site Plan Review**

Application by Christian Dean, on behalf of Standard Mill, LLC for a major site plan review at 150 Portland Avenue.

**Motion:** The City Planning Commission adopted the findings and approved the site plan review application for the Whitney Hotel located at 150 Portland Avenue South subject to the following conditions:

1. Approval of the variance, conditional use permits, and minor subdivision.
2. Staff review and approval of the final site plan. The site plan shall be approved before building permits may be issued.
3. If estimated site improvement costs exceed \$2,000, the applicant shall submit a performance bond in the amount of 125% of the estimated site improvement costs before building permits can be issued.
4. The parking drive aisle off of Portland shall be brought into conformance with the parking regulations of the zoning code by October 30, 2003.
5. Compliance with HPC conditions of approval.
6. Compliance with the applicable standards of the MR Mississippi River Overlay District.
7. The applicant shall work with the Park Board to replace the boulevard trees that have been cut down by September 30, 2004.

8. Easements must be determined and provided to staff before building permits are issued.
9. Openings on the river façade are not to be expanded.

**E. Minor Subdivision**

Application by Christian Dean, on behalf of Standard Mill, LLC, for a minor subdivision at 150 Portland Avenue.

**Motion:** The City Planning Commission adopted the findings and **denied** the minor subdivision application for the Whitney Hotel located at 150 Portland Avenue South.

# **Minneapolis City Planning Department Report**

## **Site Plan Review, Conditional Use Permits, & Variance (BZZ-1352) Minor Subdivision (MS-105)**

**Date:** September 8, 2003

**Date Application Deemed Complete:** August 4, 2003

**End of 60 Day Decision Period:** October 2, 2003

**Applicant:** The Standard Mill, LLC

**Address Of Property:** 150 Portland Avenue South

**Contact Person And Phone:** Christian Dean – Julie Snow Architects 612-359-9430

**Planning Staff And Phone:** Jim Voll 612-673-2587

**Ward:** 5      **Neighborhood Organization:** Downtown Minneapolis Residents Association

**Existing Zoning:** C3A Community Activity Center District

**Overlay Districts:** MR Mississippi River Critical Area Overlay District, DP Downtown Parking Overlay District, and the DH Downtown Height Overlay District.

### **Concurrent Review:**

- A conditional use permit to allow 35 condominium units;
- a conditional use permit to allow the building to exceed the maximum allowable height of six stories or 84 feet, whichever is less, in the Downtown Height Overlay District;
- variance to increase the maximum allowable floor area ratio in the Downtown Height Overlay District from 4 to 4.7;
- site plan review; and
- minor subdivision.

**Existing Use:** Ninety-six room hotel.

**Proposed Use:** Thirty-five condominium units.

**Appropriate Section(s) of the Zoning Code:** Chapter 525, Article VII Conditional Use Permits; Chapter 525, Article IX Variances, specifically Section 525.520(3), “to vary the gross floor area, floor area ratio and seating requirements of a structure or use”; Chapter 530 Site Plan Review; Chapter 551 Overlay Districts; and Chapter 598 Subdivisions.

**Background:** The applicant proposes to convert the Whitney Hotel to 35 condominium units. This requires a conditional use permit and site plan review. The applicant is proposing to subdivide the property into two parcels, one for the condos and the other for a portion of the

plaza for future development. The site currently meets the required floor area ratio (FAR), but if the lots are subdivided, then a variance is required to allow the hotel/condo building to exceed the maximum allowable FAR in the Downtown Height Overlay District of 4.0 to a FAR of 4.8. In addition, a conditional use permit is required to increase the height of the building from the maximum allowable height of six stories or 84 feet, whichever is less, for portions of the roof and elevator tower. The applicant proposes to replace the mechanical screen on the elevator tower and to replace the roof on the seven floor of the building. Both areas already exceed the height limit and the new structures are basically the same height as the old structures, but since they exceed the height limit a CUP is necessary.

A Travel Demand Management (TDM) plan was approved for the surrounding developments (existing and proposed) in January of 2001. Public Works will not require a new TDM for this development, but will require that it participate in the existing TDM, which will include a contribution to the cost of installing a traffic signal at the Portland Avenue and 2<sup>nd</sup> Street intersection in the future.

The site is in a Historic District. The Heritage Preservation Commission approved a certificate of appropriateness at its meeting of August 12, 2003.

### **CONDITIONAL USE PERMIT (to allow 35 condominium units)**

Any residential development of five units or more requires a conditional use permit in the C3A District.

#### **Findings as required by the Minneapolis Zoning Code:**

The Minneapolis City Planning Department has analyzed the application and from the findings above concludes that the establishment, maintenance, or operation of the proposed conditional use:

- 1. Will not be detrimental to or endanger the public health, safety, comfort or general welfare.**

The conversion to 35 condominium units should not be out of character to an area that is being redeveloped for residential and cultural uses.

- 2. Will not be injurious to the use and enjoyment of other property in the vicinity and will not impede the normal or orderly development and improvement of surrounding property for uses permitted in the district.**

Much of the surrounding area has been or will be redeveloped for residential use. The addition of residential to this area should have few negative impacts on surrounding uses.

- 3. Adequate utilities, access roads, drainage, necessary facilities or other measures, have been or will be provided.**

Adequate utilities and access roads are existing or will be constructed. Vehicular access will be

off of the Portland Avenue and 2<sup>nd</sup> Street. Drainage will be reviewed and approved by the Public Works Department as a part of final site plan approval.

**4. Adequate measures have been or will be provided to minimize traffic congestion in the public streets.**

Thirty-five parking spaces are required for the condominiums. There is no parking available on the site. The applicant will lease parking in the adjacent Depot East ramp. There is a Travel Demand Management (TDM) plan that was approved for the surrounding area in January of 2001. Public Works will require the applicant to be a participant in the TDM. The development will convert 96 hotel rooms to 35 condominium units, so there should be little effect on existing congestion in the public streets.

**5. Is consistent with the applicable policies of the comprehensive plan.**

The *Downtown 2010 Plan* is the part of the comprehensive plan that guides development for downtown. *Downtown 2010* identifies this area as a site for housing development. Policy number four of the Downtown Living chapter of the plan (see page 43) states that the city should “locate medium to high-density housing in areas designated as a Riverfront Residential District located adjacent to and near the West River Parkway. This district should provide locations for housing that can take advantage of the open space and recreational amenities of the riverfront. The primary use of this district should be housing. Other retail, office, cultural and recreational uses should be encouraged, especially those that revitalize historic structures, but should be compatible with housing.” In addition the plan also encourages the preservation, restoration, and reuse of historic buildings (page 19).

This site is also located within the *Historic Mills District Plan*. The plan states (page 30) that “the primary land use recommendation is multi-story housing, providing for expansion of the downtown housing market now well established in the Warehouse District.”

The proposed use of the site for housing is in conformance with the policies of *Downtown 2010* and the *Historic Mills District Plan*.

The plan does show the site as appropriate for ground level retail or restaurants, to provide these services as the residential neighborhood develops. Staff encourages the applicant to consider making the site adaptable for future first floor retail, although it may not be possible as the first floor is to be used for residential units.

**6. And, does in all other respects conform to the applicable regulations of the district in which it is located upon approval of this conditional use permit, site plan review, variance, and minor subdivision.**

**CONDITIONAL USE PERMIT (to increase the height of the building)**

The applicant proposes to replace the mechanical screen on the elevator tower and to replace the roof on the seven floor of the building. Both already exceed the height limit. The new structures

are basically the same height as the old structures, but since they exceed the height limit a CUP is necessary. The existing roof is approximately 103 feet and the new roof will be 4.5 inches taller. The existing elevator tower will be replaced with a new mechanical screen that is approximately the same height as the existing tower at 126 feet.

### **Findings as required by the Minneapolis Zoning Code:**

The Minneapolis City Planning Department has analyzed the application and from the findings above concludes that the establishment, maintenance, or operation of the proposed conditional use:

- 1. Will not be detrimental to or endanger the public health, safety, comfort or general welfare.**

The conversion to 35 condominium units and the replacement of portions of the roof that already exceed the height limits should not be out of character to an area that is being redeveloped for residential and cultural uses.

- 2. Will not be injurious to the use and enjoyment of other property in the vicinity and will not impede the normal or orderly development and improvement of surrounding property for uses permitted in the district.**

Much of the surrounding area has been or will be redeveloped for residential use. The height CUP is to replace portions of the roof that already exceed 84 feet. This should have no negative impacts on surrounding uses.

- 3. Adequate utilities, access roads, drainage, necessary facilities or other measures, have been or will be provided.**

Adequate utilities and access roads are existing or will be constructed. Vehicular access will be off of the Portland Avenue and 2<sup>nd</sup> Street. Drainage will be reviewed and approved by the Public Works Department as a part of final site plan approval.

- 4. Adequate measures have been or will be provided to minimize traffic congestion in the public streets.**

Thirty-five parking spaces are required for the condominiums. There is no parking available on the site. The applicant will lease parking in the adjacent Depot East ramp. There is a Travel Demand Management (TDM) plan that was approved for the surrounding area in January of 2001. Public Works will require the applicant to be a participant in the TDM. The increase in height will be minimal over existing conditions, so it should have no effect on congestion in the public streets.



**5. Is consistent with the applicable policies of the comprehensive plan.**

Neither plan lists recommendation regarding height for this parcel beyond those in the zoning code. The *Historic Mills District Plan* lists appropriate heights for developable sites in plan area (page 14 of the plan update). In general the limits match those of the Downtown Height Overlay. The Whitney building already exceeds the height limits of the code and the new construction will be similar to the existing conditions. Therefore it should be considered in conformance with the plan.

**6. And, does in all other respects conform to the applicable regulations of the district in which it is located upon approval of this conditional use permit, site plan review, variance, and minor subdivision.**

**In addition to the conditional use standards contained in Chapter 525 and this article, the city planning commission shall consider, but not be limited to, the following factors when determining maximum height:**

**(1) Access to light and air of surrounding properties.**

The increase in height should not prevent access to light and air for surrounding properties significantly more than if the height were limited to six stories.

**(2) Shadowing of residential properties or significant public spaces.**

The cup will allow the replacement of the elevator tower mechanical screen and the seventh floor roof, which already exceed the height limit. The changes will not shadow the surrounding areas more than current conditions.

**(3) The scale and character of surrounding uses.**

The building will not change significantly from the existing conditions, so the addition will not be out of character with surrounding uses. The Heritage Preservation Commission has approved a certificate of appropriateness for the changes.

**(4) Preservation of views of landmark buildings, significant open spaces or water bodies.**

The building will not change significantly from the existing conditions, so the addition will not block views any more than if the building were to remain as it is now. The Heritage Preservation Commission has approved a certificate of appropriateness for the changes.

**VARIANCE (to increase the floor area ratio)**

The floor area ratio (FAR) is the gross floor area of the building divided by the area of the zoning lot. Gross floor area does not include space devoted to accessory off-street parking or loading

facilities, including aisles, ramps and maneuvering space. The gross floor area of the building is approximately 108,693 square feet. The size of the zoning lot is 22,649 square feet. Therefore, the FAR is approximately 4.8. If the variance is denied the applicant would not be able to subdivide the lot in the manner proposed.

**Findings Required by the Minneapolis Zoning Code:**

**Findings Required by the Minneapolis Zoning Code:**

- 1. The property can be put to a reasonable use under the conditions allowed and strict adherence to the regulations of this zoning ordinance would cause undue hardship.**

The property currently has a large enough lot size to meet the required FAR. The splitting of the parcel into two parcels creates a situation where the hotel/condo building no longer meets the required FAR. This is a self imposed hardship that is not created by the zoning ordinance.

- 2. The circumstances are not unique to the parcel of land for which the variance is sought and have not been created by any persons presently having an interest in the property. Economic considerations alone shall not constitute an undue hardship if reasonable use for the property exists under the terms of the ordinance.**

The property currently has a large enough lot size to meet the required FAR. The splitting of the parcel into two parcels creates a situation where the hotel/condo building no longer meets the required FAR. This is not a unique situation, but rather is one that could be applied to almost any property in the city. Further the need for the variance is caused by the applicant's desire to subdivide the property.

- 3. The granting of the variance may not be in keeping with the spirit and intent of the ordinance and will not alter the essential character of the locality or be injurious to the use or enjoyment of other property in the vicinity.**

The purpose of floor area ratios is to set the appropriate bulk and density of an area. Granting the variance will not change the character of the area for the existing building, but it could allow a higher density on the overall site when the plaza is developed in the future.

- 4. The proposed variance will not substantially increase the congestion of the public streets, or increase the danger of fire, or be detrimental to the public welfare or endanger the public safety.**

The granting of the variance will not be detrimental to the public welfare or increase the danger of fire. It is difficult to say if the granting of the variance will substantially increase traffic in the public streets. If the plaza is not developed it will have little effect. If the plaza is developed in the future to its full FAR, then the variance may have an effect on traffic as it would cause a situation where the entire site is developed at a higher FAR than would be allowed if it were never subdivided.

## **SITE PLAN REVIEW**

### **Required Findings for Major Site Plan Review**

- A. The site plan conforms to all applicable standards of Chapter 530, Site Plan Review. (See Section A Below for Evaluation.)**
- B. The site plan conforms to all applicable regulations of the zoning ordinance and is consistent with applicable policies of the comprehensive plan. (See Section B Below for Evaluation.)**
- C. The site plan is consistent with applicable development plans or development objectives adopted by the city council. (See Section C Below for Evaluation.)**

### **Section A: Conformance with Chapter 530 of Zoning Code**

#### **BUILDING PLACEMENT AND FAÇADE:**

- Placement of the building shall reinforce the street wall, maximize natural surveillance and visibility, and facilitate pedestrian access and circulation.
- First floor of the building shall be located not more than eight (8) feet from the front lot line (except in C3S District or where a greater yard is required by the zoning ordinance). If located on corner lot, the building wall abutting each street shall be subject to this requirement.
- The area between the building and the lot line shall include amenities.
- The building shall be oriented so that at least one (1) principal entrance faces the public street.
- Except in the C3S District, on-site accessory parking facilities shall be located to the rear or interior of the site, within the principal building served, or entirely below grade.
- For new construction, the building façade shall provide architectural detail and shall contain windows at the ground level or first floor.
- In larger buildings, architectural elements shall be emphasized.
- The exterior materials and appearance of the rear and side walls of any building shall be similar to and compatible with the front of the building.
- The use of plain face concrete block as an exterior material shall be prohibited where visible from a public street or a residence or office residence district.
- Entrances and windows:
  - Residential uses shall be subject to section 530.110 (b) (1).
  - Nonresidential uses shall be subject to section 530.110 (b) (2).
- Parking Garages: The exterior design shall ensure that sloped floors do not dominate the appearance of the façade and that vehicles are screened from view. At least thirty (30) percent of the first floor façade that faces a public street or sidewalk shall be occupied by commercial uses, or shall be designed with architectural detail or windows, including display windows, that create visual interest.

The building is existing and is up to the property lines on 2<sup>nd</sup> Street and Portland Avenue. There is no room between the lot line and building for amenities as the building is built up to the property line. The building is oriented so the principal entrance faces 2<sup>nd</sup> Street and Portland Avenue. The exterior of the building uses architectural detail and contains windows at the first floor level. The final design of the façades of the building has received HPC approval.

#### **ACCESS AND CIRCULATION:**

- Clear and well-lighted walkways of at least four (4) feet in width shall connect building entrances to the adjacent public sidewalk and to any parking facilities located on the site.

- Transit shelters shall be well lighted, weather protected and shall be placed in locations that promote security.
- Vehicular access and circulation shall be designed to minimize conflicts with pedestrian traffic and surrounding residential uses.
- Traffic shall be directed to minimize impact upon residential properties and shall be subject to section 530.140 (b).
- Areas for snow storage shall be provided unless an acceptable snow removal plan is provided.
- Site plans shall minimize the use of impervious surfaces.

Vehicular access will remain off of the 2<sup>nd</sup> Street and Portland Avenue right-of-way. Thirty-five parking spaces are required for the condominiums. There is no parking available on the site. The applicant will lease parking in the adjacent Depot East ramp. There is a Travel Demand Management (TDM) plan that was approved for the surrounding area in January of 2001. Public Works will require the applicant to be a participant in the TDM. There is a drop off drive along the plaza off of Portland that is being used as parking during the day in violation of the zoning ordinance. The parking area shall be brought into conformance with zoning code requirements.

## **LANDSCAPING AND SCREENING:**

- The composition and location of landscaped areas shall complement the scale of the development and its surroundings.
  - Not less than twenty (20) percent of the site not occupied by buildings shall be landscaped as specified in section 530.150 (a).
- Where a landscaped yard is required, such requirement shall be landscaped as specified in section 530.150 (b).
- Required screening shall be six (6) feet in height, unless otherwise specified, except in required front yards where such screening shall be three (3) feet in height.
- Required screening shall be at least ninety-five (95) percent opaque throughout the year. Screening shall be satisfied by one or a combination of the following:
  - A decorative fence.
  - A masonry wall.
  - A hedge.
- Parking and loading facilities located along a public street, public sidewalk or public pathway shall comply with section 530.160 (b).
- Parking and loading facilities abutting a residence or office residence district or abutting a permitted or conditional residential use shall comply with section 530.160 (c).
- The corners of parking lots shall be landscaped as specified for a required landscaped yard. Such spaces may include architectural features such as benches, kiosks, or bicycle parking.
- Parking lots containing more than two hundred (200) parking spaces: an additional landscaped area not less than one hundred-fifty (150) square feet shall be provided for each twenty-five (25) parking spaces or fraction thereof, and shall be landscaped as specified for a required landscaped yard.
- All parking lots and driveways shall be defined by a six (6) inch by six (6) inch continuous concrete curb positioned two (2) feet from the boundary of the parking lot, except where the parking lot perimeter is designed to provide on-site retention and filtration of stormwater. In such case the use of wheel stops or discontinuous curbing is permissible. The two (2) feet between the face of the curb and any parking lot boundary shall not be landscaped with plant material, but instead shall be covered with mulch or rock, or be paved.
- All other areas not governed by sections 530.150, 530.160 and 530.170 and not occupied by buildings, parking and loading facilities or driveways, shall be covered with turf grass, native grasses or other perennial flowering plants, vines, mulch, shrubs or trees.
- Installation and maintenance of all landscape materials shall comply with the standards outlined in section 530.220.
- The city planning commission may approve the substitution or reduction of landscaped plant materials, landscaped area or other landscaping or screening standards, subject to section 530.60, as provided in section 530.230.

Landscaping around the front of the site is minimized in keeping with an area-wide strategy to respect the historically industrial character of the area. Approximately 100 percent of the site minus the buildings is a landscaped open plaza before and after the subdivision. If the lot is subdivided it is not clear what will happen to the landscaped plaza on the condo lot. A landscaping plan for this area is required before final site plan approval.

The *Historic Mills District* plan promotes (page 28) the design concept of “finger-like green spaces which extend from the riverfront park up Portland and Chicago Avenues to the Armory and Metrodome respectively.” The open space plans show the plaza as part of these greenways. Future development of the plaza may have an impact on this greenway, although if it is private property the city can not prohibit development in conformance with the zoning ordinance and approved plans. There are pedestrian easements on the plaza. Staff is not certain of the extent of the easements and to whom they are dedicated. Staff has requested that the applicant provide this information but at the writing of this report the applicant has not provided information to staff.

Some of the boulevard trees on the north side of the site have been cut down. The applicant shall work with the Park Board to determine which of these trees should be replaced.

#### **ADDITIONAL STANDARDS:**

- Lighting shall comply with the requirements of Chapter 535 and Chapter 541. A lighting diagram may be required.
- Parking and loading facilities and all other areas upon which vehicles may be located shall be screened to avoid headlights shining onto residential properties.
- Site plans shall minimize the blocking of views of important elements of the city.
- Buildings shall be located and arranged to minimize shadowing on public spaces and adjacent properties.
- Buildings shall be located and arranged to minimize the generation of wind currents at ground level.
- Site plans shall include crime prevention design elements as specified in section 530.260.
- Site plans shall include the rehabilitation and integration of locally designated historic structures or structures that have been determined to be eligible to be locally designated. Where rehabilitation is not feasible, the development shall include the reuse of significant features of historic buildings.

Lighting will comply with Chapter 535 and Chapter 541. The final design of the façade of the building is subject to HPC approval.

#### **Section B: Conformance with All Applicable Zoning Code Provisions and Consistency with the Comprehensive Plan**

##### **ZONING CODE:**

**Dumpster screening:** Section 535.80. Refuse storage containers shall be enclosed on all four (4) sides by screening compatible with the principal structure not less than two (2) feet higher than the refuse container or shall be otherwise effectively screened from the street, adjacent residential uses located in a residence or office residence district and adjacent permitted or conditional residential uses. Trash is stored in doors, but if it is ever located outside it shall be screened per code.

**Signage:** No signage is proposed for the development at this time. All new signage is required to meet the requirements of the code when it is finalized and permits are required from the Zoning Office.

#### **MINNEAPOLIS PLAN:**

Please see the comprehensive plan discussion under finding number five of the conditional use permit sections of this report.

#### **Section C: Conformance with Applicable Development Plans or Objectives Adopted by the City Council**

*The Historic Mills District* Plan was approved for this area by the City Council in 1999 and an update to the plan was approved in 2001. Please see the comprehensive plan discussion under finding number five of the conditional use permit sections of this report.

#### **Alternative Compliance. The Planning Commission may approve alternatives to any major site plan review requirement upon finding any of the following:**

- The alternative meets the intent of the site plan chapter and the site plan includes amenities or improvements that address any adverse effects of the alternative. Site amenities may include but are not limited to additional open space, additional landscaping and screening, transit facilities, bicycle facilities, preservation of natural resources, restoration of previously damaged natural environment, rehabilitation of existing structures that have been locally designated or have been determined to be eligible to be locally designated as historic structures, and design which is similar in form, scale and materials to existing structures on the site and to surrounding development.
- Strict adherence to the requirements is impractical because of site location or conditions and the proposed alternative meets the intent of this chapter.
- The proposed alternative is consistent with applicable development plans or development objectives adopted by the city council and meets the intent of this chapter.

Alternative compliance is not necessary for this site

## **MINOR SUBDIVISION**

### **Required Findings:**

**1 Subdivision is in conformance with the land subdivision regulations and the applicable regulations of the Zoning Code, and policies of the Comprehensive Plan.**

Both lots are in conformance with the requirements of the subdivision regulations, the zoning ordinance, and the comprehensive plan, unless the FAR variances is denied. Since staff is recommending denial of the FAR variance it is necessary to recommend denial of the subdivision the development will not meet the required FAR with out the variance.

**2. Subdivision will not be injurious to the use and enjoyment of other property in the immediate vicinity, nor be detrimental to present and potential surrounding land uses, nor add substantially to congestion in the public streets.**

The proposed subdivision will create two parcels out of one lot to allow separate ownership. This should have little effect on the surrounding area and will not add congestion to the public streets.

**3. All land intended for building sites can be used safely without endangering the residents or uses of the subdivision and the surrounding area by peril from floods, erosion, high water table, severe soil conditions, improper drainage, steep slopes, utility easements, rock formations, or other hazard.**

The site is level and does not present the above hazards.

**4. The lot arrangement is such that there will be no foreseeable difficulties, for reasons of topography or other conditions, in securing building permits and in providing driveway access to buildings on such lots from an approved street. Each lot created through subdivision is suitable in its natural state for the proposed use with minimal alteration.**

No change to existing grading is proposed. There is access off of Portland Avenue. Any access off of the River Road will require Park Board approval.

**5. The subdivision makes adequate provision for storm or surface water runoff, and temporary and permanent erosion control. The storm water drainage system shall be separate and independent of any sanitary sewer system. All plans shall be designed in accordance with rules, regulations and standards of the city engineer. Facilities intended to be dedicated to the City shall be located in perpetual, unobstructed easements of a width determined to be adequate and necessary by the city engineer. To the extent practicable,**

**the amount of stormwater runoff from the site after development does not exceed the amount occurring prior to development.**

Existing utility and drainage provisions are adequate for the existing and proposed development.

## **RECOMMENDATION OF THE CITY PLANNING DEPARTMENT:**

### **CONDITIONAL USE PERMIT (for 35 condominium units)**

The City Planning Department recommends that the City Planning Commission adopt the above findings and **approve** the conditional use permit application for 35 condominium units for the Whitney Hotel located at 150 Portland Avenue South subject to the approval of the variances, conditional use permit for height, site plan review, minor subdivision, and HPC conditions of approval.

### **CONDITIONAL USE PERMIT (to increase the height of the building)**

The City Planning Department recommends that the City Planning Commission adopt the above findings and **approve** the conditional use permit application to increase the height of the building from the maximum allowable height of 6 stories or 84 feet for the Whitney Hotel located at 150 Portland Avenue South subject to the approval of the variance, site plan review, minor subdivision, and the conditional use permit for 35 condominium units and HPC conditions of approval.

### **VARIANCE (to allow the FAR to be increased from 4.0 to 4.8)**

The City Planning Department recommends that the City Planning Commission adopt the above findings and **deny** the variance application to increase the maximum allowable FAR from 4.0 to approximately 4.8 for the Whitney located at 150 Portland Avenue South.

### **SITE PLAN REVIEW**

The City Planning Department recommends that the City Planning Commission adopt the above findings and **approve** the site plan review application for the Whitney Hotel located at 150 Portland Avenue South subject to the following conditions:

- 1) Approval of the variance, conditional use permits, and minor subdivision.
- 2) Staff review and approval of the final site plan. The site plan shall be approved before building permits may be issued.
- 3) If estimated site improvement costs exceed \$2,000, the applicant shall submit a performance



bond in the amount of 125% of the estimated site improvement costs before building permits can be issued.

- 4) The parking drive aisle off of Portland shall be brought into conformance with the parking regulations of the zoning code by October 30, 2003.
- 5) Compliance with HPC conditions of approval.
- 6) Compliance with the applicable standards of the MR Mississippi River Overlay District.
- 7) The applicant shall work with the Park Board to replace the boulevard trees that have been cut down by September 30, 2004.

### **MINOR SUBDIVISION**

The City Planning Department recommends that the City Planning Commission adopt the above findings and **deny** the minor subdivision application for the Whitney Hotel located at 150 Portland Avenue South.

**Excerpt from the  
Monday, September 8, 2003  
CITY PLANNING COMMISSION  
MINUTES  
317 City Hall  
Minneapolis, MN 55415  
4:30 p.m.**

**17. The Standard Mill, LLC (BZZ-1352, MS-105 Ward 5)**

**150 Portland Avenue** (Jim Voll).

**A. Conditional Use Permit**

Application by Christian Dean, on behalf of Standard Mill, LLC for a conditional use permit at 150 Portland Avenue to allow 35 condominium units.

**Motion:** The City Planning Commission adopted the findings and **approved** the conditional use permit application for 35 condominium units for the Whitney Hotel located at 150 Portland Avenue South subject to the approval of the variances, conditional use permit for height, site plan review, minor subdivision, and HPC conditions of approval.

**B. Conditional Use Permit**

Application by Christian Dean, on behalf of Standard Mill, LLC for a conditional use permit at 150 Portland Avenue to allow the building to exceed the maximum allowable height of six stories or 84 feet, whichever is less, in the Downtown Height Overlay District.

**Motion:** The City Planning Commission adopted the findings and **approved** the conditional use permit application to increase the height of the building from the maximum allowable height of 6 stories or 84 feet for the Whitney Hotel located at 150 Portland Avenue South subject to the approval of the variance, site plan review, minor subdivision, and the conditional use permit for 35 condominium units and HPC conditions of approval.

**C. Variance**

Application by Christian Dean, on behalf of Standard Mill, LLC, for a variance at 150 Portland Avenue to increase the maximum allowable floor area ratio in the Downtown Height Overlay District from 4 to 4.7.

**Motion:** The City Planning Commission adopted the findings and **denied** the variance application to increase the maximum allowable FAR from 4.0 to approximately 4.8 for the Whitney located at 150 Portland Avenue South.

**D. Major Site Plan Review**

Application by Christian Dean, on behalf of Standard Mill, LLC for a major site plan review at 150 Portland Avenue.

**Motion:** The City Planning Commission adopted the findings and **approved** the site plan review application for the Whitney Hotel located at 150 Portland Avenue South subject to the following conditions:

10. Approval of the variance, conditional use permits, and minor subdivision.
11. Staff review and approval of the final site plan. The site plan shall be approved before building permits may be issued.
12. If estimated site improvement costs exceed \$2,000, the applicant shall submit a performance bond in the amount of 125% of the estimated site improvement costs before building permits can be issued.

13. The parking drive aisle off of Portland shall be brought into conformance with the parking regulations of the zoning code by October 30, 2003.
14. Compliance with HPC conditions of approval.
15. Compliance with the applicable standards of the MR Mississippi River Overlay District.
16. The applicant shall work with the Park Board to replace the boulevard trees that have been cut down by September 30, 2004.
17. Easements must be determined and provided to staff before building permits are issued.
18. Openings on the river façade are not to be expanded.

**E. Minor Subdivision**

Application by Christian Dean, on behalf of Standard Mill, LLC, for a minor subdivision at 150 Portland Avenue.

**Motion:** The City Planning Commission adopted the findings and **denied** the minor subdivision application for the Whitney Hotel located at 150 Portland Avenue South.

Staff Jim Voll: This is a proposal to convert the Whitney Hotel from 96 rooms to 35 condominium units at the corner of 2<sup>nd</sup> Street and Portland Avenue. A CUP for residential, anytime you have more than five units and site plan review, is needed. Also, to redo the top of the building, a CUP for height is needed. The one thing required based on dividing the lot is a minor subdivision and the FAR variance. Staff is recommending approval of the CUP for the units. Plans say residential is appropriate in this area. We're recommending approval of the site plan as well. On the height CUP, look at your staff reports to see the before and after drawings, on the top of the elevator tower, they're replacing some materials and on the roof of the main building, it ends up being a half a foot taller. Staff is recommending approval of that as well. Look at the Hennepin County map, it shows they have one, two, three, four lots. The two L-shape lots are where the building is and the other lots are where the plaza is. Because they want to add balconies on the back, they'll have windows. They would like to split the ownership (because the person or corporation that owns all of the property would like to eventually have the ownership of the condos be with the condo association and to keep the remainder of the plaza for future development). They are moving the lot line to where that dashed line is, which, if you look on the survey drawing in the packet, you can see it moves about 20 or so feet. By doing that, then they sell this half, the owner would be retaining this half and this would all go with the condo association. As it stands right now with all four lots together, they have enough lot area to meet their FAR variance, but by subdividing, then they no longer meet the FAR requirement and it necessitates an FAR variance. Staff recommended denial. It's just a self-created hardship, which is why we denied that. If that variance was denied, a minor subdivision was not doable, we recommended the denial of that as well. I think the applicant is going to talk about possible solutions they have to try and remedy that situation. I want to mention that the façade of the building has gone through HPC and has their approval.

Commission President Martin: Presumably the first time when it was being redeveloped.

Staff Jim Voll: Well yes, but they actually are making changes to the façade as well.

Commission President Martin: So all of that has gone through HPC?

Staff Jim Voll: That has gone through HPC. Then on the plaza, I didn't put this in my report because I was a little bit hurried when I wrote it, but on the plaza there's several easements, consider adding a condition that says all the easements shall be provided to staff and that we would not allow building permits on any area where they would be prohibited by an easement. I know that's kind of convoluted language, but since we don't know who the easements are to or what they're to, I'm trying to write it in a way that says if there's an easement that says you can't put a building there, then you can't put a building there until you resolve the easements.

President Martin: I'm just a little confused because I'm not seeing easements here.

Staff Jim Voll: You would have to look on the plat. They're blanket easements when they did the title search, there's

ten or eleven of them, they're very long and complicated, and what they're going to do is figure out what the easements are, where they are, who they are to, and then go through the proper procedures to release them if necessary. But I would like to have a condition saying that we would not issue building permits until that is cleared up. If you have any questions, I will be happy to answer them. I should mention that in the drive, I've seen that there are cars parked there illegally, so we've added a condition requiring them to resolve that situation. If you don't approve any of the project, they still have that to resolve. That's a zoning code violation that has to be resolved and we'll send enforcement there regardless of what happens here.

President Martin: Jim, I have one question: The easements are to allow balconies, but is the idea of subdividing the parcel so that what is now the plaza could become a buildable parcel?

Staff Jim Voll: It's buildable right now, but I think what they want to do is separate the ownership. The person who owns all of the property would eventually sell the Whitney Hotel to the condo association. That could be done on this property line if you didn't do the balconies or have any windows there because our building code says that you can't build a part of your building across the line and it also says you have to be a certain distance from property lines there for windows. That's why we have the setback and building code requirement. What they came up with as a proposal was to move the lot line which resolves the building code and the zoning code setback requirements. You could split the lots without doing a minor subdivision technically, if you were willing to not build balconies and break up all these windows.

President Martin opened the public hearing.

Fred Katter: Madame Chair, Commissioners, my name is Fred Katter. I am a resident of Eden Prairie. I am here tonight as the owner's representative on the application. The necessity to divide the lot is in part due to the windows, in part due to the doors, but also maintenance of the east wall of that building requires that we have a space between the building and that lot line for future maintenance of that wall. You may recall the building was built in 1879. That's a masonry wall without steel support and the long term maintenance of that wall is a concern to us and we want to have adequate space to do that. What we would propose as the plan is presented to you is keep the lot floor area ratio on the property to 2.62. So actually the entire lot, if it were not subdivided, we're well under the allowable four floor area ratio allowance. By dividing, we raise that 2.62 to a total of 4.8. What we would like to do is by deed restriction, restrict the improvements that could be built on the new lot to 24,000 square feet. That would then result in the total FAR for the entire site to never exceed 3.2. The condo portion would still be at 4.8, but the total site would never exceed 3.2. We're willing to record a deed restriction that runs with the property to accommodate that.

Commissioner Schiff: Mr. Katter, are you an attorney?

Fred Katter: I am not.

Commissioner Schiff: OK, my attorney tells me that deed restrictions, well the City Attorney advises against us governing by the promise of deed restrictions on control of future uses of a property because there is no way for us to guaranty that. That issue has actually never been litigated in the State of Minnesota as to whether or not a deed restriction on a property can tie the hands of a future developer from exercising their development rights, so I'm wondering if you have any other information for me.

Fred Katter: I can't speak to whether a developer can, but what I can speak to is a bank lending on a future development and I don't know of a bank in this nation that will lend on a development against a deed restriction.

Commissioner Schiff: OK.

Commissioner Krause: Mr. Katter, I appreciate the information about the deed restriction as well, but I'm wondering, what is the size of that, what would the new lot be in terms of square footage?

Christian Dean: Good evening, my name is Christian Dean with Julie Snow Architects. I'm the applicant which was actually noted incorrectly on the agenda as Christian Johnson. Parcel A is 18,843 square feet as subdivided. If we were to meet the FAR and move the lot line to meet the 4.0 FAR, what would remain is about 9,400 square feet for the future development.

Fred Katter: If we restricted development then to 24,000 square feet, it would bring the development ratio on that

new property to something over 2 but well below 3.

Commissioner Schiff: I have a question for the applicant. The new development on Parcel A, what exactly are your plans for Parcel A and the maintenance of that in the future?

Fred Katter: There's nothing firmly proposed at this time, but the owners of Standard Mill have talked with one or more restaurant owners about the need in the long range future, several years down the road, for a luxury restaurant. That's their preliminary thought and obviously would have to be a facility that meets with the HPC and all other requirements.

President Martin: But the thought is something not tall that would block the views?

Fred Katter: As a matter of fact, we'll have to disclose the maximum height of that building in the condominium disclosures we're preparing now and so all of the condominium buyers will have a disclosure showing that it would never exceed a certain height.

President Martin: That's good because otherwise you wouldn't get anyone to buy them, but you know that.

Commissioner Schiff: What is that height that you're planning to limit it at right now?

Fred Katter: It's a little hard for us to tell because at this point in time, the bottom of the pool is about eight feet below the corner of Portland and West River Drive. Our preliminary thought is something above the bottom of the pool, but well below Portland and West River Drive would be the base floor of that facility and our thought is that it wouldn't exceed two stories above that. So perhaps it would be 14 feet above West River Drive and Portland at that intersection.

Commissioner Schiff: What would be the equivalent elevation on the existing building on the Standard Mill?

Fred Katter: The effect would be that the owners of units on the second floor and above could see over the top of the restaurant.

Commissioner Schiff: And the first floor would still be residential?

Fred Katter: They would not be able to see over, that's correct. Those ceilings on the first floor are about 16 feet high.

The public hearing was closed.

Commissioner Krause: Madame Chair, I'll move approval, and I just hope that there's someone on this commission when the restaurant proposal comes through that remembers this discussion, Commissioner Schiff is shaking his head, so I think he's going to try to nail it down a little tighter than that (Hohmann seconded).

The motion carried 7-0.

Commissioner LaShomb: I will move 17B for approval (Young seconded).

Commissioner MacKenzie: I'm sorry to be dense, but in reading the language here from the staff on item B, what I'm reading is that the approval will allow the applicant to increase the height of the building, but it doesn't give a maximum height. Is that right?

Staff Jim Voll: I didn't give a maximum height, I didn't measure it out because when we've done that in the past it turns out we're an inch off, then we've got to send it back through. The intent was what was shown in the elevations is what they get plus or minus a little bit.

President Martin: And if they have anything else, the HPC will have things to say.

Staff Jim Voll: I mean the idea is that they can't go to 84 feet, and they wouldn't be able to anyway because of the FAR, you'd probably start getting to the point if you were adding floors you'd be exceeding your FAR. But if we want to nail down a foot dimension we can say as shown in the elevations and then I can figure out what those are

later and add them in.

Commissioner MacKenzie: I'd be fine adding that language, but I think also the FAR regulation will basically tamp down the heights. By the time you calculate FAR, you can't exceed your FAR, so there's going to be a maximum height there.

President Martin: All those in favor of that CUP, please signify by saying 'aye'.

The motion carried 7-0.

Commissioner Schiff: I'm going to vote to deny the variance, I think when the future plans come forward for this hotel, whatever height it may be, that would be the appropriate time to look at site division and I'm not comfortable with our ability to be sure what future development on that site may be. Their development rights are one thing, and what they may write into a future existing condo is another thing, but I don't think we have enough information today to grant this (Krause seconded).

The motion carried 7-0.

Commissioner LaShomb: I'll move D, staff recommendation (Hohmann seconded).

Commissioner MacKenzie: Add a condition, Jim Voll, you might have to help us with language here, but it's something to the effect about the easements being recorded before building permits are issued—is this the place to add it?

Staff Jim Voll: They don't really have to record easements, but it's just something to the effect we need to know where the easements are so that we don't allow any building over easements where you can't allow a building over easements and since I don't know where all the easements are (it's such a vague way of saying it), but I think the way you could say it is that the extent of all the easements shall be provided to staff and no building permits shall be issued where prohibited by an easement.

Commissioner LaShomb: That's acceptable.

Commissioner Schiff: Madame Chair, I'm going to raise an issue that we haven't talked about. I'm really happy that this building is getting a new lease on life and that it's being converted for condos. I'm really saddened by the changes in the façade facing the river and disappointed in the Heritage Preservation Commission for their grant of a certificate of appropriateness. The Standard Mill has been with the City for a long time since 1879 and the Italianette commercial style really depends on the regularly spaced fenestration—this has been a big municipal landmark for a very long time, even before we had a city. It was built by the City's first mayor. I think the effort to modernize this to get a little bit more marketability on some of the units comes at too high of a cost for our City's heritage. For similar reasons, I'd be concerned about this façade being covered up by another building facing the river, so I'm glad we didn't move forward on that today, but I would like to suggest that the openings not be expanded on the wall facing the east and suggest that they come up with another solution on the north, the river façade of the original mill. That the existing openings remain and that those not be expanded. Make that as a motion to the site plan.

President Martin: OK, is that acceptable? OK, so that's condition number nine. All those in favor of that motion as amended, please signify by saying 'aye'.

The motion carried 7-0.

Commissioner Schiff moved staff recommendation for item 17E (Hohmann seconded).

The motion carried 7-0.